

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #8	CCRB Case #: 201701107	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/11/2017 4:31 PM	Location of Incident: Hudson Street and Grove Street	Precinct: 06	18 Mo. SOL 8/11/2018	EO SOL 8/11/2018	
Date/Time CV Reported Sat, 02/11/2017 9:04 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/11/2017 9:04 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Obenauer	23942	935422	SRG 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Scott Obenauer	Force: Police Officer Scott Obenauer used physical force against § 87(2)(b)	

Case Summary

On February 11, 2017, § 87(2)(b) filed the following complaint by phone with the CCRB.

§ 87(2)(b) saw a video of the incident on Twitter and was not present for it. On February 14, 2017, § 87(2)(b) filed a complaint as a witness by using the CCRB website (BR01).

On February 11, 2017, at approximately 4:31 p.m., a large number of protesters were marching south on Hudson Street toward Grove Street in Manhattan. The marchers had left an earlier demonstration in Washington Square Park, and officers from multiple SRG commands were mobilized to respond. At the time of the incident, Police Officer Scott Obenauer of SRG 4 was standing in the intersection of Hudson Street and Grove Street, near the crosswalk between the northeast and southeast corners. The marchers began crossing Grove Street against a red light, and officers approached to arrest multiple individuals who were standing or walking in the crosswalk. PO Obenauer approached § 87(2)(b) and took him to the ground on the south side of Grove Street (**Allegation A**). § 87(2)(b) was transported to the 7th Precinct stationhouse, where PO Obenauer issued him a summons for disobeying a pedestrian signal (BR02).

The investigation obtained bystander video footage showing PO Obenauer's apprehension of § 87(2)(b) (BR03: BR11). A shortened clip of that footage, entitled SnagIt #1, is embedded below (BR04):



201701107_20170516_1738_DM.mp4

The investigation also obtained footage from the handheld camera of a TARU officer on scene (BR12).

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- The undersigned was unable to contact § 87(2)(b) and was therefore unable to present him with the option of mediation. The undersigned also could not present mediation to § 87(2)(b) as he stopped responding to contact attempts.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- The BADS database shows no prior arrests for § 87(2)(b). As a result, a search of OCA records for any previous criminal convictions could not be performed.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (BR05).
- PO Obenauer has been a member of the NYPD for 12 years. This is his first CCRB complaint (see officer history).

Potential Issues

- The undersigned made extensive efforts over a long period of time to contact § 87(2)(b) but was ultimately unsuccessful. § 87(2)(b) provided an email address he obtained from § 87(2)(b) and the undersigned sent three emails to that address throughout February. The undersigned also sent three emails in March to an address associated with § 87(2)(b) on LexisNexis, and sent four Facebook messages to § 87(2)(b) in February and March. § 87(2)(b) updated his Facebook page in April, indicating that he should have been aware of the messages. The undersigned mailed three letters to a Brooklyn address associated with § 87(2)(b) in LexisNexis, and one letter to a Connecticut address associated with him. The undersigned also found a phone number for § 87(2)(b) and called six times in March. Each time, the number went to a voicemail recording of a man's voice identifying the number as belonging to § 87(2)(b). The undersigned left voicemails after each call. The undersigned called once more and left a message on June 22. The undersigned also called and emailed the § 87(2)(b) observers can be seen in the video footage speaking to § 87(2)(b) after his apprehension. § 87(2)(b) never responded to those contact attempts.
- The three witnesses who provided statements, § 87(2)(b) and § 87(2)(b) all either declined to provide a sworn statement or stopped responding to contact attempts. The undersigned made efforts to contact the other individuals who were arrested but was unsuccessful. As a result, the investigation did not obtain any sworn statements.
- § 87(2)(b) filmed a portion of the incident, but he ultimately refused to provide his video footage.
- PO Obenauer described an unidentified lieutenant from a different SRG command as the officer who initially called for § 87(2)(b)'s arrest and who possibly witnessed the apprehension. PO Obenauer was unable to name or otherwise identify this lieutenant, and could not point him out in the video footage. The investigation was similarly unable to discern the lieutenant in the footage. However, because the incident is chaotic and PO Obenauer and § 87(2)(b) are frequently obscured by other individuals in the footage, the investigation cannot definitively determine if such a lieutenant is present.

Findings and Recommendations

- **Allegation A—Force: Police Officer Scott Obenauer used physical force against § 87(2)(b)**

As previously discussed, the investigation was unable to obtain a sworn statement from § 87(2)(b).

In SnagIt #1, § 87(2)(b) can be seen standing roughly in the center of the crosswalk at the time officers begin making arrests. He does not appear to move from his position. The scene is loud and chaotic, and § 87(2)(b) frequently moves his body and the camera. § 87(2)(b) is in the background, is often obscured by other individuals, and occasionally leaves the field of view entirely. Three officers, including PO Obenauer, can be seen walking east across the crosswalk toward § 87(2)(b)'s position. Within a second, PO Obenauer is blocked from view by other protestors. He advances on § 87(2)(b) who is also almost completely obscured by other individuals. Within one more second, § 87(2)(b) comes stumbling toward a snow bank on the south side of the crosswalk with PO Obenauer behind him. It is unclear if PO Obenauer is holding onto § 87(2)(b). § 87(2)(b) and PO Obenauer are then briefly obscured again by other individuals. § 87(2)(b) steps west and it can be seen that PO Obenauer has come down into the snow bank

beside § 87(2)(b) PO Obenauer immediately shifts atop § 87(2)(b)'s back and pushes him facedown against the snow bank. Other officers join as § 87(2)(b) is handcuffed with a zip-tie.

PO Obenauer recounted that he saw various protestors enter the crosswalk against the light, and that all those individuals could therefore have been arrested for disorderly conduct (BR06). He heard an unidentified SRG1 lieutenant scream something to the effect of, 'Get him!' or 'Come arrest this guy!' PO Obenauer turned and saw the lieutenant reaching out toward § 87(2)(b) with both hands as if he was attempting to grab him. § 87(2)(b) slapped or swiped the lieutenant's hand to the side and "took off running." § 87(2)(b) was in the process of turning away from the lieutenant, and PO Obenauer thought he intended to flee south. He immediately ran after § 87(2)(b) and reached him in a couple of steps. § 87(2)(b)'s back and side were visible to PO Obenauer. § 87(2)(b) "stiff-armed" PO Obenauer by extending one arm and pushing him in the chest. PO Obenauer "went through" the stiff-arm and made contact with § 87(2)(b) as § 87(2)(b) was "almost turned fully to run."

PO Obenauer initially used the word "tackle" to describe how he took § 87(2)(b) to the ground, but later elaborated that he "ran into" or collided with § 87(2)(b) and § 87(2)(b) then went down into a snow bank. PO Obenauer did not make a deliberate decision to take § 87(2)(b) to the ground; it happened as a result of him colliding with § 87(2)(b). He would have preferred simply to have grabbed § 87(2)(b) but it happened quickly. PO Obenauer denied that § 87(2)(b) suffered or complained of any injuries as a result of being taken to the ground.

PO Obenauer issued § 87(2)(b) the summons for crossing against the light as per instructions from a Legal Bureau officer. He could have arrested § 87(2)(b) for resisting arrest and assault, but he never considered doing so because he felt that § 87(2)(b) was simply "trying to get away" and was not "being malicious."

Although § 87(2)(b) and § 87(2)(b) all witnessed the incident and reported seeing § 87(2)(b) being brought to the ground, none of them had a sufficiently detailed view of the moment when § 87(2)(b) was brought down to challenge or corroborate PO Obenauer's account (BR07; BR08; BR09;).

As previously discussed, the chaotic nature of the incident and the large number of people blocking § 87(2)(b) and PO Obenauer from view negatively impacted the usefulness of the video footage. The bulk of § 87(2)(b)'s body is obscured in the moments that he allegedly swiped the lieutenant's hand and turned to flee, and both § 87(2)(b) and PO Obenauer are completely obscured at the moment when PO Obenauer first made physical contact with him. The few frames showing the moments between when PO Obenauer reached § 87(2)(b) and when § 87(2)(b) went to the ground do not provide a basis for determining whether PO Obenauer intended to take § 87(2)(b) to the ground. § 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to place a person in custody or to prevent escape from custody. Officers must use only the reasonable force necessary to gain control or custody of a subject (BR10).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Squad: 8

Investigator:	_____	<u>Daniel Giansante</u>	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date